FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

COALITION FOR GOOD GOVERNANCE, et al., **Plaintiffs,** **v.** **BRAD RAFFENSPERGER, et al.,** **Defendants.**	**Civil Action No. 1:20-cv- 01677 -TCB**

RESPONSE TO PORTIONS OF MOTION TO DISMISS REGARDING STANDING AND ELEVENTH AMENDMENT IMMUNITY

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Pursuant to the Court's Order entered on the docket May 12, 2020, at 1:50 PM EDT, Plaintiffs respectfully file this Response to Portions of Motion to Dismiss Regarding Standing and Eleventh Amendment Immunity and, in connection therewith, state as follows:[1]

I. Introduction

The Secretary routinely opposes voting rights cases like this one by resorting to pro forma attacks on standing and reflexively invoking an erroneous theory of Eleventh Amendment immunity. These objections are without merit, and both of these threshold issues can and should be promptly resolved against the Secretary so the Court can proceed to adjudicate the merits of the Plaintiffs' request for injunctive relief.

While standing obviously requires a unique analysis in every case, the Secretary's impoverished theory of standing in the context of voting rights cases has met with consistent rejection from different judges in this district. *See, e.g.*, *Fair Fight Action, Inc. v. Raffensperger*, 413 F. Supp. 3d 1251, 1263–69 (N.D. Ga. 2019) (Jones, J.) (finding standing over Secretary's objection); *Curling v. Kemp*, 334 F. Supp. 3d 1303, 1314–20 (N.D. Ga. 2018) (Totenberg, J.) (finding standing

[1] Plaintiffs respectfully reserve their right to file a full response addressing the entirety of the Defendants' Motion to Dismiss (Doc. 32) pursuant to the Federal Rules of Civil Procedure.

over Secretary's objection); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1333–35 (N.D. Ga. 2018) (May, J.) (finding standing over Secretary's objection). The claims raised in this case are not remotely vulnerable to a standing objection. All the elements of standing have been alleged and each element is supported by declarations that verify the complaint and provide additional factual details.

On the subject of immunity, the Secretary's same Eleventh Amendment arguments have already been considered by the Eleventh Circuit and were soundly rejected just last year. *See Curling v. Raffensperger*, 761 Fed. Appx. 927, 920 (11th Cir. 2019) (per curiam) (William Pryor, Rosenbaum, and K. Michael Moore, JJ.) (rejecting the Secretary's invocation of Eleventh Amendment immunity to defend Georgia's former voting system against a constitutional challenge brought by some of the same plaintiffs in this case). This Court should simply apply the Eleventh Circuit's recent, well-reasoned repudiation of the Secretary's identical immunity arguments here.

II. Response To Defendants' Challenges To Standing

"The issue of whether the plaintiff lacks standing is jurisdictional[.]" *London v. Wal-Mart Stores, Inc.*, 340 F.3d 1246, 1251 (11th Cir. 2003). "Rule 12(b)(1) motions to dismiss for lack of subject matter jurisdiction can be asserted on either facial or factual grounds." *Carmichael v. Kellogg, Brown & Root Servs*., 572 F.3d

1271, 1279 (11th Cir. 2009). In a facial attack, the Court assumes the complaint's jurisdictional allegations are true and evaluates their sufficiency to plead the elements of jurisdiction. In a factual attack, the Court is asked to evaluate whether the allegations are actually true based on evidence and facts extrinsic to the complaint, such as testimony and affidavits. *Id.*

"When standing is questioned at the pleading stage . . . 'general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim.'" *Elend v. Basham*, 471 F.3d 1199, 1208 (11th Cir. 2006). But the burden of establishing standing increases "with the successive stages of litigation: although mere allegations sufficed at the pleading stage, actual evidence was required to withstand summary judgment." *City of Miami Gardens v. Wells Fargo & Co*., No. 18-13152-AA, 2020 U.S. App. LEXIS 13450, at *3 (11th Cir. Apr. 27, 2020) (William Pryor, J.). Between these stages, "where the plaintiffs had only a few hours of hearing time to present their preliminary injunction case and were thereby forced to limit their evidence to what they reasonably understood to be the contested issues" the Eleventh Circuit has held that "standing should be judged on the sufficiency of the allegations of the complaint, with any preliminary hearing evidence favorable to the plaintiffs

on standing treated as additional allegations of the complaint." *Church v. City of Huntsville*, 30 F.3d 1332, 1336 (11th Cir. 1994). Whether a more lenient standard or a more demanding standard applies is immaterial if "Plaintiffs have presented sufficient allegations and evidence to survive either test." *Bischoff v. Osceola Cty.*, 222 F.3d 874, 882 n.8 (11th Cir. 2000). Such is the case here.

A. Defendants Are Wrong That No Plaintiff Alleges Sufficient Injury

The Defendants in their Motion to Dismiss assert (wrongly) that Plaintiffs have not alleged any cognizable injuries. To support this assertion, Defendants selectively recite cherry-picked statements from individual Plaintiffs' declarations (concerning harms that the Defendants believe are not cognizable.) Defendants portray these statements as the sum total of the injuries alleged. (Doc. 32-1, at 5.) But Defendants omit numerous other allegations of injuries traceable to the Defendants' threatened conduct that are more than sufficient to confer standing.

1. Recitation Of The Alleged Injuries

In a voting case, an alleged injury need not be the total frustration of the right to vote. Simply burdening the right is sufficient for standing purposes. "A plaintiff need not have the franchise wholly denied to suffer injury. Any concrete, particularized, non-hypothetical injury to a legally protected interest is sufficient." *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1351–52 (11th Cir. 2009)

(requiring a voter to produce photo identification to vote in person was an injury sufficient for standing). "The 'injury in fact' in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit." *Id.* at 1351.

Nor must an injury traceable to a defendant's conduct be significant to suffice for purposes of standing. "The Supreme Court has rejected the argument that an injury must be 'significant'; a small injury, 'an identifiable trifle,' is sufficient to confer standing." *Id*. Even a mere inconvenience is enough. *See Arcia v. Florida Secretary of State*, 772 F.3d 1335, 1341 (11th Cir. 2014) (being wrongly identified as non-citizen sufficed as an injury); *Common Cause/Georgia*, 554 F.3d at 1351 (having "to make a special trip to the county registrar's office that is not required of voters who have driver's licenses or passports" sufficed); *Charles H. Wesley Educ. Found., Inc. v. Cox,* 408 F.3d 1349, 1352 (11th Cir. 2005) (injury of being unable to vote in home precinct sufficed).

"The fact that an injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance. The victims' injuries from a mass tort, for example, are widely shared, to be sure, but each individual suffers a particularized harm." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016).

Both the Complaint and the declarations filed in support of the Motion for Preliminary Injunction assert numerous injuries that suffice to confer standing.

a) Injuries To The Individual Plaintiffs

First, the individual Plaintiffs have alleged (and submitted declarations) that they will suffer the health burdens of being exposed to a substantial risk of contracting a highly contagious, potentially deadly disease if they vote in person using BMDs on June 9, the election date that the Secretary has selected and is defending now. The Plaintiffs have each verified the allegations in the Complaint in their declarations, which go on to explain their own individual injuries. *See generally* Doc. 1 at 10; Doc. 20 at 47 (CGG); *id.* at 101, 109 (Martin); *id.* at 113, 116 (Throop); *id.* at 126-219 (Nakamura); *id.* at 158, 160, 161 (Dufort); *id.* at 167, 171 (Wasson). The health risk of contracting COVID-19 from voting is not speculative or hypothetical—a global pandemic has been declared, millions of Americans have been ordered to remain in their homes to avoid exacerbating the spread, physical distancing is mandatory everywhere to mitigate the health risk, thousands of Georgians have been sickened, significant numbers of Georgians are currently dying of the disease *every single day*, and Governor Kemp has made it a misdemeanor for citizens over 65 years old even to venture out in public before June 12—with no exceptions carved out for voting. If simply being required to

show identification in order to be able to vote in person has been held sufficient to confer standing in the recent past, *see Common Cause/Georgia*, 554 F.3d at 1351–52, then being required in a declared national emergency and global pandemic to interact with poll workers, mingle in proximity with other voters, and physically operate a communal touchscreen voting machine in order to vote in person must confer standing now.

In addition, the individual Plaintiffs will also suffer injuries-in-fact sufficient to confer standing if they vote absentee because the requirements to pay postage and to travel to a mailbox or post office to mail ballot applications and ballots are the kinds of "identifiable trifles" and "inconveniences" caused by Defendants' conduct that have already been adjudicated as sufficient to provide standing. *Arcia*, 772 F.3d at 1341. The fact that absentee voters must suffer these costs and inconveniences is itself the kind of unequal treatment as between in-person and absentee voters that the Eleventh Circuit has already confirmed will confer standing. *Common Cause/Georgia v. Billups*, 554 F.3d at 1351.

b) Injuries To The Organizational Plaintiff Itself

Second, entity Plaintiff Coalition for Good Governance ("Coalition") has organizational standing because it has diverted resources and personnel from its other projects in order to counteract the Secretary and State Election Board's

enforcement of an election date and election procedures that will violate the constitutional rights of Coalition's Georgia membership. *See Arcia*, 772 F.3d at 1340–42 ("Under the diversion-of-resources theory, an organization has standing to sue when a defendant's illegal acts impair the organization's ability to engage in its own projects by forcing the organization to divert resources in response.").

Defendants argue that Coalition has not alleged what it would divert resources from. (Doc. 32-1, at 7–8.) This false assertion is refuted by simple reference to Paragraph 135 of the Complaint, in which Coalition expressly alleges that, in order "to counteract Defendant's unconstitutional failure to address the impact of the COVID-19 pandemic upon elections in Georgia," Coalition has diverted money and staff time from "Coalition's work in North Carolina and Colorado and other work in Georgia, including . . . educating the public and officials about North Carolina's unconstitutional voting equipment, secret ballot violations, and advocating for North Carolina legislative changes relating to those issues." (Doc. 1, at 67, ¶ 135.) These allegations have been verified in a declaration submitted by Coalition's Executive Director, Marilyn Marks. (Doc. 20, at 47, ¶ 24.)

c) Injuries To Persons Who Give Associational Standing To The Organizational Plaintiff

Third, Coalition has associational standing both because its members who are individual Plaintiffs have standing and because its non-Plaintiff individual Georgia members would themselves have standing to sue in their own right for all the same reasons that the individual Plaintiffs do. See *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1160 (11th Cir. 2008) (stating elements of associational standing).[2]

Defendants make a conclusory assertion that Coalition's associational standing fails "for the same reasons that the individual Plaintiffs cannot establish standing." (Doc. 32-1, at 8.) But, as shown in Section II.A.1.a.. above, each of the individual Plaintiffs has alleged and verified an individual injury-in-fact that is sufficient for her individual standing. In the face of the Complaint and Plaintiffs declarations, the Defendants must do more than simply assert that the individual Plaintiffs lack standing for such an erroneous statement to be credited.

[2] The Court need not address whether Coalition has associational standing because the entity has shown organizational standing. *See Common Cause/Georgia*, 554 F.3d at 1351 (associational inquiry unnecessary where organizational standing exists).

2. The Alleged Injuries Are Not "Hypothetical," "Abstract," or "Conjectural" But Are Real And Immediate

Defendants argue that uncertainty about the future course of the COVID-19 pandemic means the threat of Plaintiffs being needlessly exposed to the disease is itself "hypothetical, "abstract," or "conjectural." (Doc. 32-1, at 5–6.) This argument is a non-sequitur. The risk of Plaintiffs being exposed to the disease if in-person voting on BMDs and without safety measures goes forward on June 9 is real—there is nothing hypothetical, abstract, or conjectural about it. Defendants themselves admit as much every time they say they are adopting measures to mitigate the threat of voting.

"For an injury to be 'particularized,' it 'must affect the plaintiff in a personal and individual way.'" *Spokeo*, 136 S. Ct. at 1548. "A 'concrete' injury must be '*de facto*'; that is, it must actually exist. …. 'Concrete' is not, however, necessarily synonymous with 'tangible.' Although tangible injuries are perhaps easier to recognize, we have confirmed in many of our previous cases that intangible injuries can nevertheless be concrete." *Id.* at 1548–49.

Being forced to endure exposure to the disease as the price of in-person voting is a particularized and concrete injury—and a real burden on the right to vote—that each individual voter will suffer. The fact that this injury is a future

injury that will be suffered as a result of the individual Plaintiffs deciding to vote in person does not diminish the injury for standing purposes:

> The likelihood of Houston suffering future injury thus is not contingent upon events that are speculative or beyond his control. Rather, the cause of the injury continues to exist, and the likelihood of Houston encountering that cause in the future depends only on Houston's own volition. Houston has been to the store in the past, he wants to return, and his frequent trips directly past the store render it likely that he would do so were it not for the alleged ADA violations in the Presidente Supermarket. Under the totality of the facts here, the threat of future injury to Houston is not merely "conjectural" or "hypothetical." Instead, it is "real and immediate."

Houston v. Marod Supermarkets, Inc., 733 F.3d 1323, 1337 (11th Cir. 2013) (finding standing).

B. Defendants Are Wrong That Alleged Injuries Are Not Traceable to Defendants Or Redressable By Relief Against Defendants

The Defendants are wrong that the Plaintiffs' alleged injuries are only traceable to the county election superintendents. (Doc. 32-1, at 9–12.) While it is certainly true that county superintendents do play a large role in Georgia's elections, none of the county superintendents can provide the relief required to avoid the constitutional violations that are threatened. Only the State Defendants are responsible for (1) requiring election day to be held on June 9—rather than a later date that would avoid the worst of the pandemic and give counties much-

needed time to spare absentee voters from being forced to cast less effective votes; (2) requiring in-person voting to be conducted using communal touchscreen BMDs—rather than the safer, lawful voting method of hand marked paper ballots; and (3) requiring in-person and absentee voting to be conducted without first instituting the common-sense Pandemic Voting Safety Measures or their equivalents.

The injuries that Plaintiffs are threatened with are fairly traceable to the Secretary's conduct. "[N]o authority even remotely suggests that proximate causation applies to the doctrine of standing. . . . Instead, even harms that flow indirectly from the action in question can be said to be 'fairly traceable' to that action for standing purposes." *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1273 (11th Cir. 2003) (internal citations and quotation marks omitted).

By the same token, an injunction against any of the Secretary's conduct—even something as simple as an order requiring him to refrain from conducting the election until June 30—will redress at least some of the Plaintiffs' injuries, and even "partial relief is sufficient for standing purposes[.]" *Made in the USA Found. v. United States*, 242 F.3d 1300, 1310 (11th Cir. 2001) (citations omitted).

Because Plaintiffs have alleged injury-in-fact, causation, and redressability, all the elements of standing are present. Given the stage of proceedings, the evidence that Plaintiffs have placed into the record is more than sufficient to establish Plaintiffs' standing and to permit Plaintiffs to invoke this Court's jurisdiction to adjudicate their claims.

C. Specific Issues Raised By The Decision In *Jacobson*

The Court ordered that, "With respect to the first issue [standing], Plaintiffs should address the Eleventh Circuit's recent holding in *Jacobson v. Florida Secretary of State*, No. 19 14552, 2020 U.S. App. LEXIS 13714 (11th Cir. Apr. 29, 2020)." As explained below, nothing in *Jacobson* weighs against a finding that the Plaintiffs have standing in this case.

In *Jacobson*, the Eleventh Circuit considered whether voters and organizations had standing to challenge a Florida law that governed the order in which candidates appear on Florida's general election ballot. The plaintiffs sued the Florida Secretary of State to enjoin enforcement of the law. After a bench trial, the district court enjoined the Florida Secretary and the non-party county superintendents from preparing ballots in accordance with the law. On appeal, the Eleventh Circuit concluded that the voters and organizations had failed to prove an injury in fact and failed to prove that any injury they might suffer was fairly

traceable to the defendant Florida Secretary of State or redressable by a judgment against her. The Eleventh Circuit held that because the county superintendents were not parties, the district court lacked authority to enjoin them and thus was powerless to provide redress.

Jacobson is consistent with the Plaintiffs' standing and claims in this case. First, because only one of the three voter plaintiffs in *Jacobson* even testified and the third "failed to identify any difficulty in voting," the plaintiffs failed to introduce evidence that was essential to prove standing.[3] The Eleventh Circuit rightly refused to take cognizance of more generalized injuries arising from voters' desires to see their preferred election outcomes achieved and to avoid seeing the voting strength of their fellow partisans be effectively diluted by the effect of placing incumbents' names first on the ballot.

None of these conclusions suggests the insufficiency of the concrete and personal injuries-in-fact alleged by the Plaintiffs in this case. On the contrary, the unproven and attenuated injuries alleged in *Jacobson* serve to emphasize the genuineness of the injuries that threaten the Plaintiffs in this case. Exposure to disease is a concrete and particularized harm to a cognizable interest in one's

[3] It is notable that the district court in *Jacobson* conducted a full bench trial. Thus the stage of proceedings in which standing was insufficiently proved in *Jacobson* was much further along than the proceedings in this case.

personal health. The decision in *Jacobson* casts no doubt on the sufficiency of the individual Plaintiffs' injuries-in-fact alleged in this case.

Second, *Jacobson* rejected the organizations' claims to associational standing because five of the six organizations failed even to allege they had any affected members, and the sixth organization failed to identify its affected members. None of these problems is present for Coalition in this case. Coalition has alleged it has Georgia members who will be (and are being) affected by Defendants' conduct. (Doc. 1, at 68, ¶¶ 136–37.) Coalition also alleges that the individual Plaintiffs are members, which identifies them. (*E.g.*, Doc. 1, at 69–70, ¶¶ 139–40.) Nothing in *Jacobson* casts doubt on the adequacy of Coalition's alleged associational standing.

Third, *Jacobson* affirmed that "resource diversion is a concrete injury," *Jacobson* at *21, but rejected the organizations' claims to organizational standing arising from diversion because the organizations did not explain what activities they were diverting resources away from. Coalition's allegations do not suffer from this deficiency, because Coalition has alleged the other activities it is unable to pursue because its resources have been diverted to address the Defendants' threatened conduct this case. (Doc. 1, at 67, ¶ 135.)

Fourth, *Jacobson* concluded that the causation and redressability elements of standing were not satisfied where the Florida Secretary, who was the only defendant,

was not legally responsible for printing the names of candidates on ballots in the order required by the state law. The Eleventh Circuit recognized that this responsibility belonged to county supervisors who were not subject to the Florida Secretary's control. The Eleventh Circuit gave no weight to general allegations that the Florida Secretary was the chief election officer of the State, and it ruled that the district court exceeded its authority by enjoining the county supervisors when they were not parties to the case.

As explained in Section II.B. above, the problems of causation and redressability that drove the *Jacobson* decision are absent here. In this case, the Secretary is the official responsible for setting Georgia's primary election date. He is also empowered to move the election date in cases of national emergency. Georgia law also gives the Secretary the responsibility to determine whether BMDs are "safe and practicable for use" and to provide all counties with a uniform voting system. O.C.G.A. § 21–2–300; O.C.G.A. § 21–2–383(c). *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011) ("Although the Secretary of State cannot directly qualify or challenge candidates for local boards of education or certify the results of those elections, as a member and the chairperson of the State Election Board, he has both the power and the duty to ensure that the entities charged with those responsibilities comply with Georgia's election code in carrying out those tasks.")

For their part, the members of the State Election Board are responsible (1) to promulgate rules and regulations to obtain uniformity in election practices, as well as the legality and purity of all primaries and elections, O.C.G.A. § 21–2–31(1); and (2) to formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections, O.C.G.A. § 21–2–31(2).

In light of the foregoing responsibilities, it is clear that the issues of causation and redressability in this case are different from *Jacobson*. Not only do the Secretary's authority to set and move the primary election date and the State Election Board's authority to promulgate rules for the conduct of elections make the threatened injuries-in-fact to the Plaintiffs fairly traceable to the Defendants' official conduct, but the Defendants' authority and responsibilities also mean that relief granted against the Defendants will redress the injuries that Plaintiffs are otherwise likely to suffer. *Jacobson* does not have any adverse impact on the Plaintiffs' ability to establish standing in this case.

III. Response to Defendants' Eleventh Amendment Immunity Arguments

Defendants are also wrong to argue that the Complaint in this case is barred by the Eleventh Amendment. As noted at the outset of this Response, the Eleventh Circuit already considered and rejected the Defendants' very same Eleventh

Amendment argument a year ago in a different case brought by some of these same Plaintiffs against the Secretary and State Election Board, among others. *See Curling*, 761 Fed. Appx. at 930–34 (per curiam) (William Pryor, Rosenbaum, K. Michael Moore, JJ.).

State officials have long been subject to an exception to Eleventh Amendment immunity in official-capacity suits brought in federal court under 42 U.S.C. § 1983 seeking prospective injunctive relief from federal constitutional violations. *See Edelman v. Jordan*, 415 U.S. 651, 677 (1974). The doctrine that recognized this exception to immunity and has allowed such suits ever since was established 112 years ago in *Ex Parte Young*, 209 U.S. 123 (1908). The *Young* exception to immunity encompasses as-applied challenges to state action. *See Massachusetts v. Missouri*, 308 U.S. 1, 13 (1939).

The Secretary's arguments here are the same arguments that he made unsuccessfully to the Eleventh Circuit in *Curling.* The Secretary argues that he should not be subject to a suit by voters because the State of Georgia enjoyed a "special sovereignty interest" in administering elections and because the specific relief requested by the Plaintiffs will "diminish, even extinguish" this special sovereignty interest by involving the Court in dictating how Georgia must regulate elections. The Secretary argues that the exception to Eleventh Amendment

immunity set out in *Ex Parte Young* does not apply when "special sovereignty interests" are implicated in this manner.

The Eleventh Circuit decisively rejected these arguments in *Curling*. Judge William Pryor wrote per curiam in *Curling* that, "The State Defendants are not entitled to Eleventh Amendment immunity because Plaintiffs comfortably satisfy *Ex parte Young*." *Curling*, 761 Fed. Appx. at 930. "As long as the plaintiff alleges ongoing violations of federal law and seeks injunctive or declaratory relief, or both, against state officials in their official capacity, plaintiffs usually face no hurdles in clearing *Ex parte Young*." *Id.* at 931. "Plaintiffs seek only an injunction barring the State Defendants from enforcing election rules that allegedly violate Plaintiffs' constitutional rights. Since they allege those rules will violate their constitutional rights in the future, they have satisfied *Ex parte Young*'s exception." *Id.* at 932.

Judge Pryor went on to confirm that *Ex parte Young*'s exception to Eleventh Amendment immunity permits challenges not only to state official's actions, but also to their inactions. "Accordingly, even if all Plaintiffs alleged was that the State Defendants were neglecting to repair Georgia's voting system to bring it in line with federal law, Plaintiffs' suits would still fit within *Ex parte Young*." *Id.* at 933.

Finally, Judge Pryor directly addressed (and rejected) the Secretary's argument that the State's "special sovereignty interests" in administering elections was somehow superior to voters' constitutional rights. "Undoubtedly, *Ex parte Young* suits are permitted when the plaintiff alleges that state election officials are conducting elections in a manner that does not comport with the Constitution." *Id.* at 934.

The Secretary objects that the Plaintiffs in this case have proposed specific Pandemic Voting Safety Measures that they believe he should institute to avoid the threatened constitutional violations being challenged. Obviously, the availability of Eleventh Amendment immunity does not hinge on whether the Plaintiffs have proffered suggestions for relief that they believe will prevent the violation of their constitutional rights. The particular proposals that Plaintiffs have set before the Court are merely potential solutions. "Federal courts are courts in law and in equity, and a court of equity has traditionally had the power to fashion any remedy deemed necessary and appropriate to do justice in a particular case." *Carter-Jones Lumber Co. v. Dixie Distrib. Co*., 166 F.3d 840, 846 (6th Cir. 1999). In accordance with this principle, if Plaintiffs prevail (as they should) in showing that Defendants' unenjoined conduct will violate Plaintiffs' constitutional rights, then this Court can fashion an appropriate equitable remedy when it rules.

IV. Conclusion

Defendants' arguments for dismissal of the Complaint on grounds of standing and Eleventh Amendment immunity are devoid of merit and should be rejected.

Respectfully submitted this 13th day of May, 2020.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing pleading has been prepared in accordance with the font type and margin requirements of LR 5.1, using font type of Times New Roman and a point size of 14.

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